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**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name Grizzle, Eliot Scott  
(Last) (First)

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Prisoner Number H-10106

Institutional Address Pelican Bay State Prison, P.O. Box 7500, Crescent City,  
California 95531

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Eliot Scott Grizzle

(Enter the full name of plaintiff in this action.)

vs.

Robert Horel, Warden

(Enter the full name of respondent(s) or jailor in this action)

C

07

4845

Case No.

(To be provided by the clerk of court)

**PETITION FOR A WRIT  
OF HABEAS CORPUS**

SI

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Del Norte County Superior Court

Crescent City, California

Court

Location

(b) Case number, if known No. 97-268-X

(c) Date and terms of sentence June 1999, 37 years to life

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where?

Name of Institution: Pelican Bay State Prison

Address: P.O. Box 7500, Crescent City, California 95531

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Murder (California Pena Code Section 187) and Conspiracy to Commit Murder (California Penal Code Section 182).

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Yes ☐ No ☒

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐

(b) Preliminary hearing Yes ☒ No ☐

(c) Time of plea Yes ☒ No ☐

(d) Trial Yes ☒ No ☐

(e) Sentencing Yes ☒ No ☐

(f) Appeal Yes ☒ No ☐

(g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 2001 Result: Affirmed

Supreme Court of California Yes ☒ No ☐

Year: 2001 Result: Denied

Any other court Yes ☐ No ☐

Year: \_\_\_\_\_ Result: \_\_\_\_\_

(b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes ☒ No ☐

2 (c) Was there an opinion? Yes ☒ No ☐

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes ☐ No ☒

5 If you did, give the name of the court and the result:

6 \_\_\_\_\_  
7 \_\_\_\_\_

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to  
9 this conviction in any court, state or federal? Yes ☒ No ☐

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that  
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed  
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit  
13 for an order authorizing the district court to consider this petition. You may not file a second or  
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28  
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following  
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: Del Norte County Superior Court

19 Type of Proceeding: Habeas corpus

20 Grounds raised (Be brief but specific):

21 a. Use of perjured testimony

22 b. Ineffective assistance of counsel

23 c. \_\_\_\_\_

24 d. \_\_\_\_\_

25 Result: Denied Date of Result: 6/18/07

26 II. Name of Court: California Court of Appeal, First Appellate District

27 Type of Proceeding: Habeas corpus

28 Grounds raised (Be brief but specific):

1 a. Use of perjured testimony  
 2 b. Ineffective assistance of counsel  
 3 c. \_\_\_\_\_  
 4 d. \_\_\_\_\_  
 5 Result: Denied Date of Result: 9/6/07

6 III. Name of Court: Supreme Court of California  
 7 Type of Proceeding: Petition for review to exhaust state remedies  
 8 Grounds raised (Be brief but specific):  
 9 a. Use of perjured testimony  
 10 b. Ineffective assistance of counsel  
 11 c. \_\_\_\_\_  
 12 d. \_\_\_\_\_  
 13 Result: Pending Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_  
 15 Type of Proceeding: \_\_\_\_\_  
 16 Grounds raised (Be brief but specific):  
 17 a. \_\_\_\_\_  
 18 b. \_\_\_\_\_  
 19 c. \_\_\_\_\_  
 20 d. \_\_\_\_\_  
 21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?  
 23 Yes ☒ No ☐

24 Name and location of court: Supreme Court of California

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
 27 support each claim. For example, what legal right or privilege were you denied? What happened?  
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: See attached

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7 Supporting Facts: See attached

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11 Claim Two: See attached

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13 Supporting Facts: See attached

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15  
16  
17 Claim Three: See attached

18  
19 Supporting Facts: See attached

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21  
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23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25 All grounds were previously presented.

1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 See attached.

5  
6  
7 Do you have an attorney for this petition?

Yes ☒ No ☐

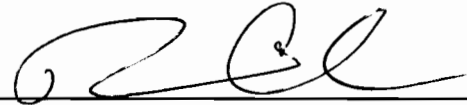
8 If you do, give the name and address of your attorney:

9 Benjamin L. Coleman, 433 G Street, Suite 202, San Diego, California 92101

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on September 18, 2007

14 Date



Signature of Petitioner

Benjamin L. Coleman  
Attorney for Petitioner

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20 (Rev. 6/02)



1 Claim One: The prosecution knowingly, or at least recklessly and negligently, presented perjured testimony  
2 and failed to conduct investigation to ensure that it was not presenting perjured testimony in violation of the  
Fifth, Sixth, and Fourteenth Amendments.

3 Supporting Facts: The facts supporting this claim are somewhat involved, but, in brief, the prosecution  
4 secured convictions through the use of perjured testimony. The prosecution used two inmate witnesses,  
5 Frederick Clark and Brian Healy, who both claimed to have committed perjury in the past. Unfortunately  
6 for Mr. Grizzle, such perjury was not simply a thing of the past and instead infected the fairness of his trial.  
7 The transcripts of the trial definitively establish that, at the very least, one of the two convicts committed  
8 perjury about their relationship. In actuality, it is evident that both convict witnesses committed perjury.  
9 What is worse, the prosecution knew of this perjury, or, at the very least, was reckless and negligent in its  
10 eagerness to secure convictions based on this perjured testimony. Indeed, despite the fact that the  
11 prosecution was put on notice before trial that it would likely be using perjured testimony, it failed to  
12 conduct an investigation and instead remained willfully ignorant of the facts. Even after the trial testimony  
of Clark and Healy definitively established that at least one of them was committing perjury, the prosecution  
still refused to inform the trial court of the perjury or to conduct an investigation. To the contrary, the  
prosecution heavily relied on the perjury throughout the trial, especially during closing arguments. After  
the trial, facts known to the prosecution have definitively revealed that Clark is a pathological perjurer and  
that his testimony and the arguments made by the prosecutor based on his testimony were false. Yet, the  
prosecution continues to fail to inform the court or investigate its use of the perjury. Finally, the improper  
use of this perjured testimony was prejudicial to Mr. Grizzle in this less than overwhelming case. Actually,  
the prosecutor admitted under oath that Clark's testimony was central to securing Mr. Grizzle's convictions:  
"the large difference in the case was Clark's testimony."

13 Cases: *Napue v. Illinois*, 360 U.S. 264 (1959); *Mooney v. Holohan*, 294 U.S. 103 (1935); *Morris v. Ylst*,  
14 447 F.3d 735 (9<sup>th</sup> Cir. 2006); *Hayes v. Brown*, 399 F.3d 972 (9<sup>th</sup> Cir. 2005) (*en banc*); *Killian v. Poole*, 282  
F.3d 1204 (9<sup>th</sup> Cir. 2002); *Northern Mariana Islands v. Bowie*, 243 F.3d 1109 (9<sup>th</sup> Cir. 2001).

15 Claim Two: Mr. Grizzle's Fifth, Sixth, and Fourteenth Amendment rights were violated because his trial  
16 lawyer, Russell Clanton, rendered ineffective assistance of counsel by failing to prepare and failing to  
17 investigate the perjury of Clark and Healy, and therefore Clanton never brought it to the attention of the jury  
or the trial court.

18 Supporting Facts: The superior court agreed that Clanton rendered deficient performance when he failed to  
19 review discovery material produced to him, specifically a videotape of an interview of Clark. The perjury  
20 of Clark and Healy would have been crystal clear to Clanton had he reviewed the videotape of Clark's  
21 interview. Clanton's incompetent failure to watch the videotape was prejudicial. Clanton clearly should  
22 have recognized the perjury committed by Clark and Healy from their trial testimony and was incompetent  
23 in failing to do so. However, even if he had missed the obvious perjury during the trial, he certainly would  
have recognized it had he watched the videotape. He could have then brought the perjury to the attention  
of the court and the jury during the trial. Instead, the perjury was completely overlooked and never argued  
to the court or the jury. Moreover, Clanton's failure to watch the videotape was prejudicial as he never  
conducted any investigation to undermine Clark's allegations. Also, had Clanton viewed the videotape, he  
would not have been caught off guard by Clark's testimony.

24 Cases: *Strickland v. Washington*, 466 U.S. 668 (1984); *Williams v. Washington*, 59 F.3d 673 (7<sup>th</sup> Cir. 1995).

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1 Claim Three: The prosecution violated Mr. Grizzle's rights under the Fifth, Sixth, and Fourteenth  
2 Amendments when it failed to turn over exculpatory evidence, a prison log, which undermined the testimony  
of Healy, one of the prosecution's cooperating inmate witnesses.

3 Supporting Facts: As mentioned above, Healy was a cooperating witness for the prosecution who had  
4 committed perjury in the past (and in Mr. Grizzle's trial). One of the central aspects of Healy's testimony  
5 was that he had an encounter with Mr. Grizzle in prison in which Mr. Grizzle allegedly incriminated himself  
6 in the murder for which he was convicted. A prison log, however, contradicted Healy's claim that he had  
7 this encounter with Mr. Grizzle, and the prosecution did not turn over the log until after the trial. The state  
8 court of appeal appeared to recognize that this was exculpatory evidence which should have been turned over  
but determined that the failure to produce the log in a timely manner did not result in prejudice. The state  
9 court of appeal's prejudice finding, which did not cite any authority, was plainly erroneous, as the failure  
10 to produce this exculpatory, impeaching evidence as to a critical witness was prejudicial in this less than  
11 overwhelming case.

12 Cases: *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v.*  
13 *Maryland*, 373 U.S. 83 (1963); *Hayes v. Brown*, 399 F.3d 972 (9<sup>th</sup> Cir. 2005) (*en banc*); *Benn v. Lambert*,  
14 283 F.3d 1040 (9<sup>th</sup> Cir. 2002); *Carriger v. Stewart*, 132 F.3d 463 (9<sup>th</sup> Cir. 1997) (*en banc*); *United States v.*  
15 *Steinberg*, 99 F.3d 1486 (9<sup>th</sup> Cir. 1996); *United States v. Brumel-Alvarez*, 991 F.2d 1452 (9<sup>th</sup> Cir. 1993);  
16 *United States v. Bernal-Obeso*, 989 F.2d 331 (9<sup>th</sup> Cir. 1993).

17 Claim Four: Mr. Grizzle's rights under the Fifth, Sixth, and Fourteenth Amendments were violated when  
18 he was tried in shackles and conditions of extraordinary security.

19 Supporting Facts: Even though Mr. Grizzle engaged in no disruptive behavior in court, he was placed in  
20 restraints for his jury trial. He was chained at the waist and ankles to a heavy security chair. His left hand  
21 was also linked by handcuffs to the waist chain. Only his right hand was free to write. Mr. Grizzle's  
22 codefendant, who was the actual killer, was tried separately. The codefendant was tried first and, unlike Mr.  
23 Grizzle, was only chained at his ankles and had both hands free. The codefendant did not engage in  
24 disruptive behavior during his trial and was acquitted of conspiracy to commit murder. The subsequent  
25 imposition of restraints for Mr. Grizzle was not justified and was certainly not the least restrictive alternative  
26 given the less onerous conditions imposed on Mr. Grizzle's more dangerous codefendant. Mr. Grizzle's  
constitutional rights were violated by the shackling thereby requiring his convictions to be vacated.

27 Cases: *Deck v. Missouri*, 544 U.S. 622 (2005); *Illinois v. Allen*, 397 U.S. 337 (1970); *Duckett v. Godinez*,  
28 67 F.3d 734 (9<sup>th</sup> Cir. 1995); *Spain v. Rushen*, 883 F.2d 712 (9<sup>th</sup> Cir. 1989).

29 Claim Five: Mr. Grizzle's rights under the Fifth, Sixth, and Fourteenth Amendments were violated when  
30 the trial court failed to declare a mistrial due to the taint of the jury.

31 Supporting Facts: At the end of the second day of the trial, juror number 5 reported a contact concerning the  
32 trial. The juror worked at Pelican Bay State Prison, where Mr. Grizzle was incarcerated and where the  
33 alleged murder took place. The juror reported that an inmate told him: "Well, I hear you are Juror No. 5."  
34 The inmate stated that "word gets around." The juror initially stated that he could remain on the jury, but  
35 the next day reported that he should be removed. The juror had also discussed the incident with all of the  
36 other jurors. Some of the jurors stated that juror number 5 felt "uneasy" and that they were concerned for  
his "safety" and that he may be "in danger." Nevertheless, the trial court failed to declare a mistrial in  
violation of Mr. Grizzle's Fifth, Sixth, and Fourteenth Amendment rights.

37 Cases: *Parker v. Gladden*, 385 U.S. 363 (1966); *Turner v. Louisiana*, 379 U.S. 466 (1965); *Remmer v.*  
38 *United States*, 350 U.S. 377 (1956); *Mattox v. United States*, 146 U.S. 140 (1892); *Caliendo v. Warden of*  
*California Men's Colony*, 365 F.3d 691 (9<sup>th</sup> Cir. 2004).

1 Claim Six: Mr. Grizzle received ineffective assistance of counsel in violation of his Fifth, Sixth, and  
2 Fourteenth Amendment rights when his trial counsel failed to renew a motion for mistrial based on the jury  
3 taint and failed to object to a variety of improperly prejudicial evidence and prosecutorial misconduct,  
4 particularly during the prosecutor's opening and closing arguments.

5 Supporting Facts: Trial counsel moved for a mistrial based on the jury taint described above but did not  
6 renew a motion for a mistrial. To the extent that the motion needed to be renewed, the failure to do so  
7 constituted deficient performance. Trial counsel also engaged in deficient performance by failing to object  
8 to a variety of improperly prejudicial evidence and prosecutorial misconduct. During the prosecutor's  
9 arguments, he emphasized that the Aryan Brotherhood, a prison gang which Mr. Grizzle was allegedly  
10 associated with, was racist and "Nazi-like." The prosecutor commented on a variety of other supposed  
11 Aryan Brotherhood cases and conduct that had nothing to do with the instant case and urged the jury to  
12 convict in order to resolve the societal problem of prison gangs and the Aryan Brotherhood in particular.  
13 He introduced evidence and made comments on generalized threats to the witnesses that were not attributed  
14 to Mr. Grizzle. The prosecutor also improperly vouched for his witnesses, arguing that they were like a  
15 variety of biblical figures. Yet, Mr. Grizzle's trial attorney did not lodge sufficient objections to most of this  
16 misconduct and improperly prejudicial evidence. Moreover, Mr. Grizzle was prejudiced by his counsel's  
17 deficient performance.

18 Cases: *Payne v. Tennessee*, 501 U.S. 808 (1991); *Estelle v. McGuire*, 502 U.S. 62 (1991); *United States v.*  
19 *Young*, 470 U.S. 1 (1985); *Strickland v. Washington*, 466 U.S. 668 (1984); *Donnelly v. DeChristoforo*, 416  
20 U.S. 637 (1974); *United States v. Weatherspoon*, 410 F.3d 1142 (9<sup>th</sup> Cir. 2005); *United States v. Williams*,  
21 989 F.2d 1061 (9<sup>th</sup> Cir. 1993); *United States v. Simtob*, 901 F.2d 799 (9<sup>th</sup> Cir. 1990); *Dudley v. Duckworth*,  
22 854 F.2d 967 (7<sup>th</sup> Cir. 1988).

**PROOF OF SERVICE**

I, the undersigned, say:

1) That I am over eighteen years of age, a resident of the County of San Diego, State of California, and not a party in the within action;

2) That my business address is 433 G Street, Suite 202, San Diego, California, 92101;

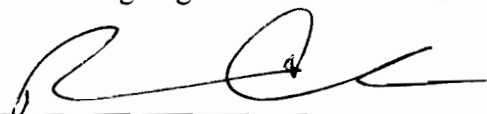
3) That on September 19, 2007, I filed the attached Petition by sending via federal express an Original and three copies thereof to Clerk of the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, California 94102.

4) That on September 19, 2007, I served a copy of the Petition on counsel for respondent via U.S. Mail by sending a copy to Michael Riese, District Attorney's Office, 450 H Street, Crescent City, CA 95531.

5) That on September 19, 2007, I served a copy of the Petition on Eliot Scott Grizzle via U.S. Mail by sending a copy to Eliot Scott Grizzle, H-10106, Pelican Bay State Prison, P.O. Box 7500, Crescent City, CA 95532.

6) That on September 19, 2007, I served a copy of the Petition via U.S. Mail by sending a copy to William Barlow, Litigation Department, Pelican Bay State Prison, P.O. Box 7500, Crescent City, CA 95532.

I certify under penalty of perjury that the foregoing is true and correct. Executed on September 19, 2007, at San Diego, California.

  
BENJAMIN L. COLEMAN